

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
CIVIL ACTION NO: 3:10-CV-273-RJC-DCK**

**MITCHELL GATEWOOD,**

**Plaintiff,**

**v.**

**JULIE MUELLER, Special Agent with the  
Federal Bureau of Investigation, et al.,**

**Defendants.**

**MEMORANDUM AND  
RECOMMENDATION**

**THIS MATTER IS BEFORE THE COURT** on the Defendant Jones’ “Motion To Dismiss” (Document No. 12) filed September 2, 2010. This matter has been referred to the undersigned Magistrate Judge pursuant to U.S.C. §636(b), and the motion is ripe for disposition. Having considered the motion, the record, and the applicable authority, the undersigned will respectfully recommend that the motion to dismiss be granted.

Responses to the pending motion were due by September 20, 2010. On September 14, 2010, the undersigned *sua sponte* allowed an extension of time for the *pro se* Plaintiff to respond to the motion, up to and including September 27, 2010. (Document No. 15). The Court’s Order also gave notice to Plaintiff of his right to respond, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), and advised him that failure to file a timely and persuasive response would likely lead to dismissal of the lawsuit. Id. A complaint may be dismissed pursuant to Rule 41(b) of the Federal Rules Of Civil Procedure for failure to prosecute and/or failure to comply with orders of the court. Steed v. Morton, 2007 WL 3306779 at \*2 (D.S.C. 2007)(citing Ballard v. Carlson, 882 F.2d 93 (4 Cir. 1989) cert. denied 493 U.S. 1084 (1990)).

Based on the foregoing, and good cause shown by Defendant, the undersigned will recommend that the motion to dismiss be granted.

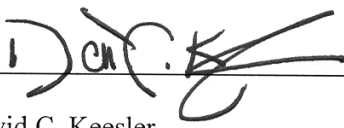
**IT IS, THEREFORE, RECOMMENDED** that Defendant Jones' "Motion To Dismiss " (Document No. 12) be **GRANTED**.

### **NOTICE OF APPEAL RIGHTS**

The parties are hereby advised that pursuant to 28 U.S.C. § 636(b)(1)(C), and Rule 72 of the Federal Rules of Civil Procedure, written objections to the proposed findings of fact, conclusions of law, and recommendation contained herein may be filed within fourteen (14) days of service of same. Responses to objections may be filed within fourteen (14) days after service of the objections. Fed.R.Civ.P. 72(b)(2). Failure to file objections to this Memorandum and Recommendation with the District Court constitutes a waiver of the right to *de novo* review by the District Court. Diamond v. Colonial Life, 416 F.3d 310, 315-16 (4th Cir. 2005). Moreover, failure to file timely objections will preclude the parties from raising such objections on appeal. Diamond, 416 F.3d at 316; Page v. Lee, 337 F.3d 411, 416 n.3 (4th Cir. 2003); Snyder v. Ridenhour, 889 F.2d 1363, 1365 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140, 147-48 (1985), reh'g denied, 474 U.S. 1111 (1986).

The Clerk is directed to send copies of this Memorandum and Recommendation to the *pro se* Plaintiff, counsel for the Defendant and the Honorable Robert J. Conrad, Jr.

Signed: September 28, 2010

  
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David C. Keesler  
United States Magistrate Judge

